

*Washington, DC*—Congressman Tim Ryan (OH-17) announced today that he will be speaking at a Senate Subcommittee on Contracting Oversight of the Senate Homeland Security hearing next Wednesday on behalf of the family of Lt. Col. Dominic Baragona, who was killed in Iraq in May 2003 after his truck was struck by a truck driven by a driver employed by the Kuwait & Gulf Link Transport Company (KGL), a Kuwait company under multiple contracts with the Department of Defense to provide logistics services in support of the United States military in Kuwait and Iraq. Evidence suggests that KGL acted negligently in this case, and Congressman Ryan has been working tirelessly with government officials to seek justice for the Baragona family.

**“I look forward to speaking on behalf of an American hero, whose life was cut short by a KGL’s negligence,” said Congressman Ryan. “I will continue to use my resources to help the Baragona family receive the justice they deserve.”**

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Last Thursday, Congressman Ryan was joined by Congressman Driehaus (OH-1) to request a civil and criminal investigation of KGL’s involvement in a letter to Attorney General, Eric Holder. The text of the letter is attached below.

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November 10, 2009

The Honorable Eric H. Holder

Attorney General

U.S. Department of Justice

950 Pennsylvania Avenue, NW

Washington, DC 20530

Subject: **Request for commencement of formal investigation and report of findings.**

This is a request that a criminal and civil investigation be conducted into the misconduct of a foreign United States government contractor for vehicular homicide and for civil contract fraud for operating without mandatory licenses and the U.S. government contractor insurance protection required under the Federal Acquisition Regulation ("FAR").

We request an investigation of egregious contractor misconduct involved in the death of Lieutenant Colonel Dominic Baragona on May 19, 2003 on a road in Iraq. His death was caused by a tractor trailer truck owned and operated by Kuwait Gulf Link & Transport Company ("KGL"), the predecessor company to an enormous group of international Kuwaiti companies, which have and continue to perform large U.S. government contracts potentially worth billions of U.S. dollars. KGL's tractor trailer careened across three lanes of a highway in the middle of a clear, sunny day and destroyed the Humvee in which Colonel Baragona was riding.

[\[1\]](#)

At the time of his death, Colonel Baragona had served honorably during Operation Iraqi Freedom and was on his way home to his family. Indeed, this company's negligence has led to another traffic fatality of a U.S. soldier. Staff Sgt. Javares J. Washington, 27, of Pensacola, Florida., died February 11, 2008 at Camp Buehring in Kuwait City, Kuwait, from injuries sustained in a vehicle accident with a KGL truck.

The official U.S. Army 15-6 2004 accident reconstruction report found that the driver caused Colonel Baragona's death, but a criminal investigation into the circumstances surrounding the traffic accident never occurred. Mahmoud Muhammed Hussein Serour, the KGL driver was airlifted to a military hospital after the accident, from which he later disappeared. KGL later claimed that he quit his job, and moved back to Egypt but did not have his contact information. Other troubling facts have emerged from the US Army investigation of this accident. It is clear from US Army photographs of the accident that the KGL truck did not have a license plate at the time of the accident, which is a violation of Kuwaiti law. [\[2\]](#) The truck could not have crossed into Iraq through security checkpoints without a license plate, which leads to the presumption that the license plate was removed after crossing the checkpoint for illicit activities. The KGL truck also disappeared immediately after the accident.

[\[3\]](#)

There remains an open question whether KGL was properly insured for the accident as required by the U.S. government contracts, and therefore U.S. procurement law, it was operating under at the time of accident. The question remains critical because KGL never offered an insurance payment to the Baragona family, testified in a U.S. federal court proceeding that it did not retain any records of its insurance contracts for the time period involved and has refused to produce its response to a request for information from the U.S.

Army Legal Services Agency, Fraud Procurement Branch regarding this issue.

If KGL did not carry the insurance required under the FAR for the performance of its U.S. government contracts, criminal penalties could result. The FAR contains several mandatory insurance clauses which are incorporated into a wide variety of federal contracts, including transportation contracts, e.g. FAR 52.228-8. The historic purpose of those clauses is to serve two equally important public policy goals. First, they are to protect innocent third parties from financial losses experienced through the negligent acts of contractors while in the performance of government contracts by making liability insurance coverage an available resource for the satisfaction of any damages to innocent victims of contractor negligence. The second purpose is to protect the United States from lawsuits by those third parties under the theory of respondent-superior. A former KGL employee named Robert Stephens stated to Steven R. Perles, representative for the Baragona family, that:

[H]e had been directed by Mohamed Fahmie, a legal advisor for KGL at the time, to improperly certify that KGL carried the proper insurance requirements for US government contracting, even though KGL did not meet the US government insurance requirements. Mr. Stephens believed this to be an act of procurement fraud and refused to bid on the contracts that required him to make those certifications. He was subsequently let go. [\[4\]](#)

Counsel for the Baragona family filed this statement in an affidavit in the United States District Court for the Northern District for the District of Georgia. Mr. Perles subsequently received an email from Mr. Stephens that stated he could not participate in the matter any further because he was being threatened with deportation by Kuwaiti government officials unless he retracted his prior statements regarding KGL.



There remain other open questions regarding the legality of KGL's transportation operation from the day of the accident. According to the U.S. Army 15-6 report the driver of the truck had a license as a "Chauffer" and not a "CDL class A" driver as required by U.S. Army regulations for the driver of a tractor trailer truck. [5] As stated in the Army Regulation 600-55, paragraph 2, [6] all DOD contractors are required to have a valid CDL license in order to be employed. It is clear that the driver did not carry the license necessary since his passport would have reflected the proper license or the special clearance that a foreign national would have needed.

[7]

A further concern was the driver's age, 58 years, which would have required the Army to issue a 346 special condition order that should have been indicated on the driver's passport, which was not on the passport.

[8]

More troubling details permeate the record of the accident. The nurse who treated the KGL driver was told that he was a Kuwaiti civilian working in Iraq as a truck driver, which was incorrect.

[9]

The nurse treated him for a fractured wrist and pain in his ribs. She then arranged a taxi upon his request for Basra.

[10]

KGL, in a subsequent statement to a U.S. Army investigator [\[11\]](#), claimed that the driver had a back injury, as opposed to a rib injury, quit his job and returned to Egypt ten days after the accident. The driver should be found and interviewed regarding the suspicious circumstances of this accident, which resulted in the death of a U.S. Army colonel. KGL is responsible for employee discipline, proper training and licensing. In a fatality, as a contractor, KGL is required to fully and completely cooperate with investigating officials. At the least, by allowing their driver to return to Egypt, KGL impeded a federal investigation. KGL personnel are subject to prosecution under Federal law as a result of the Military Extra-territorial Jurisdiction Act ("MEJA"). [\[12\]](#)

A KGL manager [13] later stated that a crew was sent the day after the collision to retrieve the badly damaged KGL vehicle. According to the KGL manager, the vehicle disappeared. Other photographs taken at the scene of the accident show clearly that the KGL truck was missing its license plates, which were required by Kuwaiti law. [14] Thus, both the driver and the truck that were involved in a fatal accident with a U.S. Army colonel disappearing after the accident. Statements in both U.S. Army 15-6 reports by the investigating officers conclude that the loss of evidence in the form of vehicles, driver and witnesses critically hindered the investigation. The investigators were unable to ascertain why a KGL truck was driving on a road without license plates by an unlicensed driver. The missing license plates, combined with the fact that a waybill was not produced at any time after the accident, raises further questions. The Army admitted that the initial accident investigation report was replete with errors and failures to gather pertinent evidence. In his report to the Commanding General of the Human Resources Command, dated January 6, 2004, on the accident investigation presentation to the family, Col. David Schneider stated, "I fully understand that this investigation was conducted under combat conditions. That said, it is my opinion that the investigation only very minimally addresses the pertinent questions of what happened, who was at fault, and what corrective actions should be taken to minimize the potential for future similar incidents. Additionally, the report contains several factual errors, failed to include direct statements from key witnesses, failed to include interviews with other key personnel, and was poorly assembled." This stunning declaration leaves no doubt that a new investigation is warranted to determine the circumstances of the accident, the potential criminal liability of both the driver for the accident and of KGL for obstruction of justice, and the potential civil liability of KGL for civil contract fraud.

The troubling nature of these facts is further highlighted in the context of the history of misconduct by this company. KGL has been placed on the Indian government's Prior Approval List ("PAL"), which functioned as a blacklist for any emigration by Indian nationals overseas based upon employment with KGL. This blacklisting was predicated upon KGL's hiring Indian nationals to work in Iraq upon the "pretext of deploying them to Kuwait." It is widely reported in Indian news sources that employees were recruited to work in Kuwait or other Gulf States but then were forced to work in the extremely dangerous conditions that prevailed in Iraq at the time. [15] The U.S. commander in Iraq responded to abuses such as these by ordering that contractors return all confiscated passports by May 1, 2006. [16] Penalties for disregarding this order included blacklisting from future work.

[17]

KGL remained on the Indian government's blacklist as late as August 25, 2008 for these types of violations. Based upon this company's extensive history of human trafficking violations, the licensing issues with the driver of the truck and his subsequent disappearance, KGL must answer whether the driver was another case of forced labor, this time forced to drive into Iraq without insurance and, considering the missing license plates, potentially carrying illegal cargo.

It is troubling that a criminal investigation of this company was never conducted given the suspicious circumstances surrounding the accident and KGL's well-documented history of human trafficking. Based upon these findings by the Indian government, Senator Mel Martinez wrote to Secretary Robert Gates on July 9, 2008 to question the fitness of KGL to receive any further contracts from the U.S. government. Two further letters recently issued to Secretary Gates regarding KGL's fitness as a federal contractor based upon the KGL's conduct in a court case filed against it for its responsibility for the death of Colonel Baragona, and for other reasons. Senator Claire McCaskill's office sent a letter on September 9, 2009 and another letter issued from both Senator McCaskill, as Chairwoman of the Senate Subcommittee on Contracting Oversight, and Senator Robert Bennett's offices as the Ranking Minority Member on the Senate Subcommittee on Contracting Oversight.

As a result of Colonel Baragona's death, the U.S. Army proposed KGL for debarment on September 22, 2006 in a "show cause" letter and reopened the investigation with a "request for information" letter in December of 2008. KGL's disregard for law and decent conduct has also resulted in KGL's official ban from recruiting in India for human trafficking. Similar reports of human trafficking by KGL have begun to emerge in the Philippines and were the subject of an inquiry by the Philippine Senate. [\[18\]](#) KGL's numerous instances of ethically challenged behavior will create obstacles in its future performance of any U.S. contracts. A U.S. federal contractor is required to conduct itself with the highest degree of integrity and honesty under Section 3.10 of the FAR. The U.S. Army's Fraud Procurement Branch sent a request for information to KGL on December 4, 2008 to inquire about the human trafficking issue and to determine whether KGL has carried sufficient insurance as required by the Federal Acquisition Regulation. It seems to these members of Congress that any contractor, foreign or domestic,

which is found at fault for causing death or bodily injury to a U.S. service member or a U.S. citizen accompanying the force, and which refuses to pay any compensation under the laws of the United States ought to be deemed non-responsible *pe*

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and precluded from doing further business with the United States.

Finally, there is a question regarding the propriety of the off-the-record contacts between counsel for KGL, retired Brigadier General Richard Bednar, the former Army Chief Debarring Official and the U.S. Army Legal Services Agency. What ethical issues are present when the former Army Chief Debarring Official is hired to lobby the debarment office, which is a quasi-judicial body? The former chief debarring officer should not be able to exert any influence on a quasi-judicial proceeding.

We request that you investigate the facts and circumstances raised in this request. This matter is urgent, as a corporate alter ego of the company whose negligence resulted in the wrongful death of Colonel Baragona is bidding on a service contract(s) with an approximate value of 9.4 billion dollars over ten years [\[19\]](#) to feed thousands of U.S. service members in the Iraq and Kuwait theater. This committee is acutely sensitive to the grave risks associated with any such potential award, as U.S. service members could be put in some harm's way by this contractor's gross negligence, and like Colonel Baragona's family will have no practical remedy under the current law and regulations.

The Baragona family and their representatives have done a great deal of research on the issues explained above, among others, and have more information that can be made available upon request. A potential contact for issues arising from the Army's 15-6 report would be the original investigating officer, Colonel Schneider. Thank you in advance for your prompt attention to this pressing matter.

Sincerely,





Tim Ryan  
Driehaus

Steve

Member of Congress  
Congress

Member of

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[\[1\]](#) See attached photo of accident site.

[2] See attached photo of accident site.

[3] U.S. Army amended 15-6 report, exhibit 22.

[4] Exhibit to Opposition to Motion to Vacate, Docket Entry #48, exhibit 6, Baragona v. KGL, 05-cv-01267-WSD (filed March 21, 2008).

[5] U.S. Army amended 15-6 report, exhibit 23.

[6] [http://www.army.mil/USAPA/epubs/pdf/r600\\_55.pdf](http://www.army.mil/USAPA/epubs/pdf/r600_55.pdf)

[7] section 6.3 Army Regulation 600-55

[8] U.S. Army amended 15-6 report, exhibit 23.

[9] U.S. Army amended 15-6 report, exhibit DD.

[10] U.S. Army amended 15-6 report, exhibit DD.

[11] U.S. Army amended 15-6 report, exhibit 22.

[12] <http://www.fas.org/irp/agency/dod/1206report.pdf> at pg. 10

[13] U.S. Army amended 15-6 report, exhibit 22.

[14] See attached photo of accident site.

[15]

<http://www.voanews.com/english/archive/2004-08/a-2004-08-16-21-1.cfm?moddate=2004-08-16>; <http://www.corpwatch.org/article.php?id=13184>;  
<http://www.indianexpress.com/news/tn-men-killed-in-iraq-kin-to-sue-firm/312765/>.

[16] <http://www.chicagotribune.com/news/local/chi-060423pipeline-story,0,1853590.story>

[17] <http://www.chicagotribune.com/news/local/chi-060423pipeline-story,0,1853590.story>

[18] <http://www.senate.gov.ph/lisdata/69846222!.pdf>.

[19] Solicitation number SPM300-08-R-0061, contracting officer Linda A. Ford of the Defense Logistics Agency.